IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTY FIFTH DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 7688 of 2005

Between:

M. Chandra Sekhar Rao, s/o Venkata Subbanayudu,
R/o 1-1-221/1, Gandhinagar, Hyderabad.

..... PETITIONER

AND

The Women Development and Child Welfare Department, Government of Andhra Pradesh, Yousufguda, Hyderabad, Rep. by its Director/Commissioner.

.. Respondent

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate writ, order or direction, more particularly one in the nature of Writ of Mandamus, declaring the action of respondent in permitting the inter-country adoption of children at Sishuvihar, more particularly, baby named Pooja, without considering claims of the petitioner and his wife being Indian Nationals as arbitrary, illegal, contrary to the directions issued by the Hon'ble Supreme Court from time to time apart from being violative of Central Adoption Resource Agency Guidelines and unconstitutional and consequently direct the respondent to give the baby girl Pooja, who is placed at Sishuvihar, Hyderabad in adoption to petitioner and his wife.

Counsel for the Petitioner: MR.C.V.R.RUDRA PRASAD

Counsel for the Respondent No.: GP FOR WOMEN DEV. & CHILD WELFARE

The Court made the following :

ORAL ORDER:

This writ petition is filed seeking a Mandamus to declare the action of the respondent in permitting the inter-country adoption of children at Sishuvihar, more particularly, a baby-girl named Pooja, without considering the claims of the petitioner and his wife being Indian Nationals as illegal and arbitrary.

The brief facts that are necessary for the purpose of disposal of the writ petition may be delineated as follows:

The petitioner is working as Deputy Director in A.P. Productivity Council and his wife is a practising advocate in Hyderabad. They made an application, dated 4.11.2004, to the respondent requesting to permit them to adopt a child from Sishuvihar where orphan children are lodged under the control of the respondent. When there was large scale racketeering in the name of inter-country adoption, the Hon'ble Supreme Court gave series of guidelines in 1994. The petitioner made an application and the same was registered by the respondent. The petitioner and his wife were under the impression that they would be called to the orphanage and they have been visiting Sishuvihar for the last six months, and they were told that one four-year-old child called Pooja was to be taken for adoption. When they went to Sishuvihar in the last week of March 2005, they were

informed that the baby-girl was given to a foreign national for inter-country adoption. The respondent cannot give the baby-girl to a foreign national contrary to the Central Adoption Research Agency (for brevity “C.A.R.A.”) guidelines and hence, the writ petition has been filed

The respondent filed a counter affidavit stating that after issuance of A.P. Orphanages and Charitable Homes (Supervision and Courts) Rules, 2001, surprise raids were conducted against few suspected organizations and 227 children were rescued. Out of them, 32 children have No Objection Certificates from C.A.R.A. for inter-country adoption. Dossiers of all 32 children were handed over to Guild of Service, Vijaya Nagar Colony, Hyderabad to process for inter-country adoption. Pooja was also included in the list of 32 children, who have No Objection Certificates from C.A.R.A. When paper publication was issued to trace out the biological parents, no one came forward to claim their children. As a Court case filed by the foreign nationals is pending, baby-girl Pooja has not been matched to Indian adoptive parents. The Guild of Service filed an interlocutory application in the Family Court to hand over the baby Pooja to them to take finger prints and medical certificates to process for Passport and Visa to send the child to U.S.A. According to the orders of this Court, in C.M.A.Nos.2009 and 2076 of 2002, the license of the Guild of Service was expired on 24.11.2003 and the processing of both inter-country and in-country adoptions of the relinquished/destitute or abandoned children should be done only by C.A.R.A. at the central level and Voluntary Adoption Coordinating Agency (for short “V.A.C.A.”) at the state level. It is also stated that the prospective adoptive foreign parents have already 3 biological children and the combined ages are more than 90 years as the date of births of adoptive father and mother are 29.10.1954 and 23.5.1959 whereas, the date of birth of the baby is 10.5.2000 and therefore, the future of Pooja is a big question in that country if adoption is not legalized as the age difference does not satisfy their law in their country. There are 150 applications pending in the department for female children.

Among those applications, the petitioner's case is one. Hence, the respondent prays to dismiss the writ petition.

The learned counsel for the petitioner has contended that contrary to the guidelines of C.A.R.A., the inter-country adoptions of children at Sishuvihar were being permitted and therefore, the action of the respondent is illegal and arbitrary.

On the other hand, the learned Government Pleader for Women Development and Child Welfare has contended that the Commissioner of Women Development & Child Welfare Department stated that the processing of both inter-country and in-country adoptions of the destitute children shall be done by C.A.R.A. at the central level and V.A.C.A. at the state level and there is no violation of guidelines issued by C.A.R.A. Hence, she prays to dismiss the writ petition.

The Guild of Service and the two petitioners represented by their General Power of Attorney filed a petition before the Judge, Family Court, Hyderabad for adoption and guardianship and that petition was allowed on the following conditions:

1. *The petitioners No.2 and 3 who sought for guardianship to adopt the child are appointed as guardians and they are entitled to custody of the person of minor Baby POOJA by permitting them to take the child to their country in U.S.A. and to adopt the child as per the laws of the land.*

2. *After taking custody of the child to their country, the petitioner No.2 and 3 and 1st petitioner also to see in so complying by petitioners No.2 and 3 that they shall send the progress reports of the minor child BABY POOJA to the placement agency and others concerned quarterly in the 1st two years and half yearly in the next ten years and subsequently from time to time as per the rules prevailing in India in this regard from time to time and also as and when required later by the Court if necessary.*

3. *The petitioners No.2 and 3 shall, produce the child before the*

Court or such other authority as being directed, and abide by such conditions as and when given if the ends of the justice require and necessary to give such a direction in the welfare of the child in future.

4. *The petitioners No.2 and 3 shall treat the child for all purposes as their biological child and shall not use the child as servant-maid or for any commercial or other purposes.*

5. *The petitioners No.2 and 3 and the foreign agency shall bound by and follow the guidelines of the Apex Court in Laxmikanth Pandy cases and revised guidelines of the Ministry of Welfare, Government of India 1995 and further guidelines if any given or being given and any guidelines given by the Government of Andhra pradesh, including G.O.16 and those of Govt. of India in this regard and any breach of it result in their liability for legal recourse.*

6. *The petitioners No.2 and 3 are directed to execute a bond in favour of the placement agency and the placement agency in turn to obtain bond from the sponsoring child welfare agency as per the guidelines of the Apex Court and Ministry of Welfare, Government of India.*

7. *The Minor child acquires the same status as natural born child of petitioners No.2 and 3 and as of within their wedlock, including with the same rights of inheritance succession and the same nationality of the petitioners No.2 and 3.*

8. *The Foreign Agency in view of its undertaking given to the Court while processing the case in India, if for any reason the child is not being legally adopted within two years from this date by the petitioners No.2 and 3 it shall immediately withdraw the child from the custody of the petitioners No.2 and 3 and keep the child in its custody and care and find out new adoptive parent for placement of the child which is fit to the welfare of the child in adoption as soon as possible and submit the report in this regard if any to the Court and to the placement agency and all concerned including to the C.A.R.A. under the Ministry of Welfare Government of India.*

That petition was allowed on 1.12.2001 in spite of the fact that the child Pooja was under the care and custody of Sishuvihar in India only. The 1st petitioner therein is a registered society-cum-voluntary organization, which is recognized by the Government of India as the agency for processing in-country and inter-country adoption of Indian children. The licence of that organization was expired on 24.11.2003 and the same has not been renewed. The respondents therein are bound by the orders of the Family Court in O.P.No.745 of 2001, dated 1.12.2001 on the file of the Judge, Family Court, Hyderabad.

Now, the grievance of the petitioner is that as per C.A.R.A guidelines, the priority for giving adoption is firstly to the Indian families, secondly to the Indian families abroad and thirdly one parent of Indian origin abroad and fourthly totally to a foreigner. The guidelines framed in 4.5 of C.A.R.A. read thus:

> *"When a recognized Indian agency receives a child its first responsibility is to trace the biological parents and restore the child to them failing which as far as possible to place the child in adoption with Indian families. IT would be desirable that an Indian recognized placement agency should place annually more than 50 per cent of the total number of children given in adoption with Indian families. However, the handicapped children, children above 6 years of age and siblings will be excluded from this calculation. The placement agencies are required to adhere the following order of priority while considering the adoption of Indian children.*

i. *Indian families in India*

ii. *Indian families abroad*

iii. *One parent of Indian origin abroad*

iv. *Totally foreign.*

> *Every recognized placement agency shall also give full details of the child to the prospective adoptive parents except the names and addresses of the biological parents, where known*

to the agency. It is only when all efforts to place the child within the country fail then the child would be cleared for inter-country adoption. These efforts should include contracting the VCA within the area of operation. A clearance certificate should be taken from VCA in this regard. Such clearance certificate shall be given by VCA. If within 60 days from the date the application to VCA, VCA is unable to send suitable Indian parents who are willing to take the child in adoption, intimation of making of the application to VCA shall be given to the Central Adoption Resource Agency forthwith. The Central Adoption Resource Agency will prepare a uniform proforma for clearance certificate to be issued by all voluntary coordinating agencies."

The above provision makes it very clear that the adoption of Indian children should be followed in the order of aforementioned priority. Based on the said provision, it is contended that the foreign nationals come at serial No.4 of the above guidelines and preference cannot be given. It is not in dispute that the processing of both in-country and inter-country adoptions of the destitute and the abandoned children should be done only by C.A.R.A at the central level and V.A.C.A. at the state level. Even according to the respondent herein, it is stated in the counter that the laws of Minnisota show that the families having up to two children are permitted to adopt from India and their combined ages cannot be more than 90 years older than the age of the child they are adopting. For example, a 48 year-old-women and 47 year-old-man would have to adopt a child of at least 5 years old. The prospective adoptive foreign parents have already three biological children and the combined ages are more than 90 years, whereas the date of birth of the baby-girl Pooja is 10.5.2000 and therefore, the future of baby Pooja is a big question in that country if her adoption is not legalized as the age difference does not satisfy their law in their country. C.A.R.A. at the central level and V.A.C.A. at the state level did not oppose the papers for inter-country adoption. It is the case filed by the voluntary organization and also the foreign nationals represented by their General Power of Attorney holder before a competent Civil Court, which after elaborate consideration of the matter, allowed the petition appointing two foreign nationals as

guardians of the minor female child Pooja. In such view of the fact, this writ petition cannot be said to be in violation of any guidelines issued by C.A.R.A. If the respondent is acting contrary to the guidelines, then his action can be declared as illegal. The consequential direction seeking to give the baby-girl Pooja in adoption to the petitioner cannot be given in view of the orders passed by the Judge, Family Court. To circumvent the decision, this Court cannot sit over in appeal in view of the fact that the said order is not under challenge. Even though the petitioner is seeking adoption of Pooja, the case of the respondent is that the baby-girl Pooja has not been matched to the Indian adoptive parents. The said fact is not denied or disputed. Unless it is shown that the respondent is acting contrary to the guidelines issued by C.A.R.A., his action cannot be declared as arbitrary and illegal.

For the foregoing reasons, the writ petition is devoid of merits and it shall accordingly stand dismissed. In the circumstances of the case, there shall be no order as to costs.

(K.C. BHANU, J.)

25th April, 2005

bcj

Note: Issue copy by tomorrow

B/o

dsr

To

1 The Director/Commissioner, The Women Development and Child Welfare Department, Government of Andhra Pradesh, Yousufguda, Hyderabad,

2 Two C.Cs. to the Government Pleader for Women Development and Child Welfare, High Court Buildings, Hyderabad (OUT)

3 Two C.D. copies.